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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Alabama Health Care Authority
406 West Avalon Avenue
Muscle Shoals, Alabama 35661

Health Care Authorities - Health Care
Facilities - Roads, Highways and Bridges
- Senior Citizens - Funds - Colbert
County

The Colbert County-Northwest Alabama Health Care Authority ("Authority") can contract with the governmental entity responsible for maintaining the public road between Helen Keller Hospital and Keller Medical Park to widen the road if the Authority's board of directors determines the improvement would accomplish a purpose of the Authority.

The Authority can donate property to be used as the location of a senior citizens facility to the City of Tuscumbia if the property does not constitute a material part of the assets of the Authority and the disposition will not significantly reduce or impair the level of health care services.

Dear Mr. Hughston:

This opinion of the Attorney General is issued in response to your request on behalf of the Colbert County-Northwest Alabama Health Care Authority.

QUESTIONS

1. May the Colbert County-Northwest Alabama Health Care Authority participate financially in the

improvement of Avalon Avenue, which connects Keller Medical Park to Helen Keller Hospital?

2. May the Authority donate two lots in the park to the City of Tuscumbia for a senior citizens facility to be constructed for the cities of Tuscumbia and Sheffield?

FACTS AND ANALYSIS

Your request states that the Colbert County-Northwest Alabama Health Care Authority owns Helen Keller Hospital and recently developed Keller Medical Park for physician offices and businesses engaged in the rendering of medical/health/pharmaceutical services and products to the public. You further state that the improvement of Avalon Avenue consists of broadening it from a two- to a four-lane public right-of-way and that the avenue is the primary route from the City of Muscle Shoals, the most populous city in Colbert County, to the hospital. This Office understands that only funds generated from the operations of the Authority itself, not from taxes, would be used for the road improvement. Locating the senior citizens facility in the park will benefit the Authority by making the remaining lots more marketable for physician offices and other medical-related uses and, further, will enable the Authority to improve its ability to render a continuum of health care services to senior citizens, e.g., providing educational programs related to health care for senior services at the facility.

The Colbert County-Northwest Alabama Health Care Authority is established pursuant to section 22-21-310, *et seq.*, of the Code of Alabama. ALA. CODE § 22-21-310 to 22-21-344 (2006). The legislative purpose in providing for health care authorities is set forth in section 22-21-312. It states, in part, as follows:

It is therefore the intent of the Legislature by the passage of this article *to promote the public health* of the people of the state (1) by authorizing the several counties, municipalities, and educational institutions in the state effectively to form public corporations whose corporate purpose shall be to acquire, own and operate health care facilities, and (2) by permitting, with the consent of the counties or municipalities (or both) authorizing their formation, existing public hospital corporations to reincorporate hereunder. To that end, this article invests each public corporation so organized or reincorporated hereunder with all powers that may

be necessary to enable it to accomplish its corporate purposes and shall be liberally construed in conformity with said intent.

ALA. CODE § 22-21-312 (2006) (emphasis added).

The powers of health care authorities are set out at section 22-21-318 of the Code. ALA. CODE § 22-21-318 (2006). Section 22-21-318(32) gives an authority the power "[t]o enter into such contracts, agreements, leases and other instruments, and to take such other actions, as may be necessary or convenient to accomplish any purpose for which the authority was organized or to exercise any power expressly granted hereunder." ALA. CODE § 22-21-318(32) (2006). Pursuant to this provision, the Authority can contract with the governmental entity responsible for maintaining the public road between Helen Keller Hospital and Keller Medical Park to widen the road if the Authority's board of directors determines the improvement would accomplish a purpose of the Authority.

Regarding donating two lots in Keller Medical Park to the City of Tuscumbia, the following additional power of health care authorities is also provided for in section 22-21-318(a)(7):

To receive, acquire, take and hold (whether by purchase, gift, transfer, foreclosure, lease, devise, option or otherwise) real and personal property of every description, or any interest therein, and *to manage, improve and dispose of the same by any form of legal conveyance or transfer*; provided however, that the authority shall not, without the prior approval of the governing body of each authorizing subdivision, have the power to dispose of (i) substantially all its assets, or (ii) any health care facilities the disposition of which would materially and significantly reduce or impair the level of hospital or health care services rendered by the authority; and provided further, that the foregoing proviso shall not be construed to require the prior approval of any such governing body for the mortgage or pledge of all or substantially all its assets or of any of its health care facilities, for the foreclosure of any such mortgage or pledge or for any sale or other disposition thereunder.

ALA. CODE § 22-21-318(a)(7) (2006)(emphasis added).

This Office has previously stated that the Escambia County Health Care Authority could donate property, formerly used as a small hospital facility, in the Town of Flomaton to the town. Opinion to Honorable Broox G. Garrett, Jr., Attorney, Escambia County Board of Education, dated November 25, 2002, A.G. No. 2003-039. That opinion reasoned as follows:

It is stated in the resolution of request from the Escambia County Health Care Authority that the property considered here does not constitute a material part of the assets of the Authority, and the disposition of the property will not significantly reduce or impair the level of health care services rendered by the Authority.

The Land Sale Law, found at section 9-15-70, *et seq.*, of the Code of Alabama, requires all sales and leases made by the state or any of its boards, commissions, bureaus, agencies, institutions, and corporations to be sold or leased by auction or sealed bids. ALA. CODE § 9-15-71 (2001). A health care authority established under section 22-21-310, *et seq.*, of the Code is an agency or instrumentality of its authorizing subdivisions and is a political subdivision of the state. ALA. CODE § 22-21-318(c)(2) (1997). As such, it is not an agent or agency of the state. *Todorov v. DCH Healthcare Auth.*, 921 F. 2d 1438, 1461, FN 37 (11th cir. 1991). Transfers between local governmental entities are exempt from the Land Sale Law. ALA. CODE § 9-15-82 (2001).

Section 94 of the Constitution of Alabama, as last amended by Amendment No. 558, prohibits a political subdivision of the state from granting money or any other thing of value in aid of a private individual, corporation, or association. ALA. CONST. art. IV, § 94; ALA. CONST. amend. 558. This provision, however, does not prohibit one political subdivision from granting property to another political subdivision. *Rogers v. City of Mobile*, 277 Ala. 261, 279, 169 So. 2d 282, 299 (1964). As stated above, the Colbert County Health Care Authority is not a political subdivision of the state, and therefore, it is not subject to section 94 of the Constitution of Alabama. *Alabama Hospital Association v. Dillard*, 388 So. 2d 903 (Ala. 1980).

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Consistent with the *Garrett* opinion, the Authority can donate property to be used as the location of a senior citizens facility to the City of Tuscumbia if the property does not constitute a material part of the assets of the Authority and the disposition will not significantly reduce or impair the level of health care services.

CONCLUSION

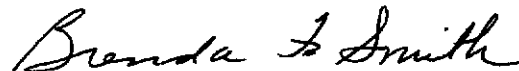
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I hope this opinion answers your questions. If this Office can be of further assistance, please contact Ward Beeson of my staff.

Sincerely,

TROY KING
Attorney General
By:



BRENDA F. SMITH
Chief, Opinions Division

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